

Town of Florence
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TOWN SERVICES

Building Safety
868-7573

Community Development
868-7575

Finance
868-7624

Fire
868-7609

Grants
868-7513

Human Resources
868-7545

Library
868-8311

Municipal Court
868-7514

Parks & Recreation
868-7589

Police
868-7681

Public Works
868-7620

Senior Center
868-7622

Town Attorney
868-7557

Utility Billing
868-7680

Water/Wastewater
868-7677

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April 9, 2014

Commissioner Susan Bitter Smith
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

ORIGINAL

RE: Docket WS-02987A-13-0477 / Johnson Utilities, LLC

Dear Commissioner Bitter Smith:

Thank you for your inquiry dated March 24, 2014. The Town of Florence appreciates the opportunity to respond to your correspondence and therefore provides the following responses to your questions:

1. It is of course beyond question that applicant Johnson Utilities, LLC ("Johnson Utilities") currently provides water and wastewater service outside the municipal boundaries of the Town of Florence (the "Town"). Although the number of utility connections at any given time is a "moving target", the Town agrees with the statistics provided by Johnson Utilities in its response to your question. As part of the due diligence being conducted by the Town into the merits of its acquisition of the assets of Johnson Utilities, the Town recently commissioned an economic analysis of Johnson Utilities from its rate consultant, Dan Jackson of *economists.com*. Mr. Jackson determined that Johnson Utilities had 24,129 water connections and 31,235 wastewater connections in total. The Town agrees that Johnson Utilities has approximately 2,174 water connections and 2,076 wastewater connections within the Town of Florence, principally within the Anthem at Merrill Ranch master-planned community being developed by Pulte Home Corporation. The Town also has a number of water and wastewater connections outside of the Town's municipal boundaries, most of which are located in a residential development which is legally part of the Tohono O'odham Indian reservation.

2. It is the Town's intent to honor all of Johnson Utilities' service commitments, whether they are current accounts or anticipated future connections. There are a few of reasons for this. First, the Town believes that it is strongly in the public interest to ensure that all customers of Johnson Utilities continue to receive service without any disruptions whatsoever, and it is committed to that goal.



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Arizona Corporation Commission

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Second, the Town's economic analysis indicates that the financial viability of the utility system will be greatly enhanced by the continued growth of the system, which necessarily implies that the Town will accept the service commitments of Johnson Utilities.

Third, Title 9 of Arizona Revised Statutes ("A.R.S.") places certain limitations upon a municipality's operation of utility systems which provide service beyond the municipal limits. Specifically, A.R.S. § 9-516(C) forbids a municipality which has acquired the facilities of a public service corporation rendering service outside its boundaries from discontinuing service while it owns or controls the utility. *See, Yuma Valley Land Co., LLC v. City of Yuma*, 227 Ariz. 228 (2011).

3. The Town agrees that customers receiving service outside its municipal boundaries should be treated no differently than those who reside within the Town limits. Again, A.R.S. Title 9 has significant safeguards:

Specifically, A.R.S. § 9-511(A)(1) requires that a municipality providing water to another municipality shall charge water rates which are the same or less than the rates it charges its own residents for water.

A.R.S. § 9-511.01 requires that a municipality engaging in water and wastewater service shall not increase its rates without preparing a report supporting the rate increase, after which it must publicly adopt a notice of intent to increase rates and then hold a public hearing.

I would also point out that the Arizona public record law, A.R.S. § 39-131 et seq., will provide a level of transparency in the operation of the utility system which is not available with respect to a privately owned system.

Taken together, these statutory requirements ensure that those customers who reside outside the Town's limits will not be treated in a disparate manner; and further, that a legal remedy exists if the Town should fail to adhere to these laws.

4. The Town of Florence, as an existing municipal water and wastewater service provider operating under the jurisdiction of two state agencies (Arizona Dept. of Water Resources and Arizona Dept. of Environmental Quality), takes its responsibilities to the public very seriously. The Town has consistently strived to provide the best possible service to its customers and to rigorously adhere to all of the many legal requirements which are applicable to a municipal utility enterprise. This philosophy of management will continue going forward, and therefore, in conjunction with the requirements of law, the Town believes that the existing statutory requirements are sufficient to ensure equal treatment of all customers.

5. The Town of Florence has concluded that the current financial health of Johnson Utilities, together with the anticipated growth in connections, will allow the Town to operate the system for at least 18 months without any change to the current rates. And although the Town's decisions regarding rates are outside the jurisdiction of the Corporation Commission, the Town believes as a matter of public policy that it is in the public's interest to maintain the current rate structure for at least that amount of time. As a practical matter, due to the requirements of A.R.S. § 9-511.01, it is also unlikely that

the Town would be able to fulfill the requirements of a rate study in a lesser amount of time.

It is worth noting that because there are limitations on the extent to which the Town's decision to maintain an existing rate structure would bind the decision-making of future legislative bodies, a contractual commitment to do so would in all likelihood be viewed as *ultra vires* and hence void.

The Town of Florence hopes that the information provided herein will prove useful in your evaluation of the application of Johnson Utilities, LLC.

Sincerely,



James E. Mannato
Florence Town Attorney

cc: Docket Control (Original + 13 copies)
Chairman Bob Stump
Commissioner Gary Pierce
Commissioner Brenda Burns
Commissioner Bob Burns
Parties on Service List for WS-02987A-13-0477